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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 15

Application Number: 09/853,339
Filing Date: May 11, 2001
Appellant(s): FARGO ET AL.

MAILED

AUG 06 2003

GROUP 3600

Carlson, Gaskey & Olds
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/30/2003.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

However, Appellant's brief presents arguments relating to the withdrawal of claims 19-23. This issue relates to petitionable subject matter under 37 CFR 1.181 and not to appealable subject matter. See MPEP § 1002 and § 1201.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1 and 14 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

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(8) Claims Appealed

A substantially correct copy of appealed claims 1 and 14 appears on page 12 of the Appendix to the appellant's brief. The minor errors are as follows: non-appealable claims 19-23 are included.

(9) Prior Art of Record

6,105,748	Pallinger et al.	08-2000
6,374,981	Gschwendtner et al.	04-2002

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1 is rejected under 35 U.S.C. 102(e) as being anticipated by

Gschwendtner et al. 6,374,981.

Gschwendtner '981 discloses an escalator support structure per claimed invention comprising: a bottom and top landing supports (figures 1-3); and a rise

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interconnecting the bottom and top landing supports (figures 2 and 3), wherein the rise includes at least one module; the module comprises a steel plate or wall support sheets near an escalator machine (figures 3 and 8). Please note in figure 2, the supporting module comprises at least a steel sheet covering the entire supporting rise including an escalator machine (see Figure 3 for the representation of an escalator machine including conveying plate 8 of the circulating plate conveying chain). Said steel sheet presenting a continuous planar exterior surface (see the continuous steel cover sheet of Figure 1).

Claims 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Pallinger et al. 6,105,748.

Pallinger '748 discloses an escalator support structure per claimed invention comprising: a bottom and top landing supports (figures 1-4); and a rise interconnecting the bottom and top landing supports, wherein the rise includes at least one module. The module comprises a continuous planar steel sheet 7 covering the entire rise including an escalator machine.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gschwendtner et al. 6,374,981.

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Gschwendtner discloses all elements per claimed invention as explained in the paragraph above, including a steel sheet module (4 & 5, figure 3) near an escalator machine. However, Gschwendtner did not explicitly state that the sheet module could be welded to other portions of the rise along the edges of said sheet.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have welded the edges of Gschwendtner's steel sheet to a portion of the rise because it facilitates the attachment of said steel sheet onto the rise instead of using bolts or screws. Welding technology is known in Gschwendtner's reference (column 4, third full paragraph).

(11) *Response to Argument*

Gschwendtner

Appellant argued that Gschwendtner '981 does not show an escalator machine being located in the rise section of the escalator. Appellant's attention is directed to the moving mechanism of an escalator machine represented at least in the cross section of Figure 3 (moving plate chain 8). Gschwendtner's escalator machine extends the entire length of the escalator. Therefore, the continuous steel covering the exterior surface of the escalator, as shown in Figure 1, also covers the escalator machine. In addition, the language of Appellant's claim 1 does not required the escalator machine "being located in the rise section of the escalator" as remarked, page 5, last full paragraph.

Pallinger

Appellant argued that Pallinger steel sheet 7 does not form an escalator support structure even though said sheet covers the entire rise of the escalator, page 7, lines

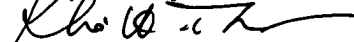
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22-25. Appellant's attention is directed to the moving mechanism of an escalator machine represented at least in the cross section of Figure 4 (moving plate chain 4 and 4.1). Pallinger's escalator machine extends the entire length of the escalator.

Therefore, the continuous steel sheet 7 covering the exterior surface of the escalator, as shown in Figures 1-4, also covers the escalator machine. In addition, the language of Appellant's claims do not mentioned any supporting/bracing features of the steel sheet nor the escalator machine being located in the rise section.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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KHT
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